



STATE OF TEXAS
DEPARTMENT OF COMMERCE

May 18, 1992

RG-383

VIA MESSENGER

The Honorable Dan C. Morales
Attorney General of Texas
Price Daniel Building
209 West 14th Street
Austin, Texas 78701

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Attention: Madeleine Johnson

Opinion Committee

Dear Ms. Johnson:

As Executive Director of the Texas Department of Commerce, I am seeking an expedited opinion concerning the ability of a city which has levied a sales and use tax in accordance with Subsection (d) of Section 4A of the Development Corporation Act of 1979, as amended (Tex. Rev. Civ. Stat. Ann. art. 5190.6, et seq.) (the "Act"), for the purpose of paying principal of, interest on, and other costs relating to bonds or other obligations of an Industrial Development Corporation created by such city in accordance with Section 4A of the Act to reduce or eliminate such sales and use tax after the issuance of bonds or other obligations by such corporation.

The Department is in the process of implementing a program to assist development corporations created under Section 4A of the Act and their sponsoring cities in their economic development programs. Specifically, the Department proposes to sell commercial paper and make the proceeds available to such development corporations in order to fund loans made for economic development purposes by such corporations and secured by such sales and use taxes. If the rate of the sales and use taxes authorized by Subsection (d) of Section 4A of the Act may be reduced below the amount necessary to pay principal of and interest on such bonds or other obligations, it will not be possible for any such bonds or other obligations to be sold. This would result in rendering ineffective the provisions of the Act relating to the issuance of such obligations, the payment of principal of and interest on which are authorized to be paid with proceeds of a levy of sales and use taxes.

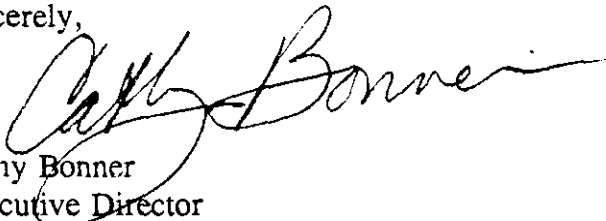
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We do not believe that the Legislature of Texas, in adopting what now appears as Subsections (n) and (o) to Section 4A of the Act, intended to render it impossible for a corporation created in accordance with Section 4A of the Act to issue bonds or other obligations which may be paid with the proceeds of a sales and use tax authorized at an election as described under Section 4A of the Act. Had that been intended, we believe the Legislature would have specifically so stated.

Your assistance as to the proper interpretation of Section 4A of the Act as originally adopted in 1989 by the 71st Legislature and subsequently amended in 1991 by the 72nd Legislature is urgently requested so the Department's pending bond program and other vital economic development projects currently under consideration by various industrial development corporations and the cities which have created such corporations in accordance with Section 4A of the Act can proceed.

If you have any questions or need to discuss this matter, please do not hesitate to call me or my General Counsel, Sedora Jefferson. Thank you for your attention to this matter.

Sincerely,



Cathy Bonner
Executive Director

CB:SJ:ch
CB004.DOC

cc: Will Pryor
Sedora Jefferson
Tom Larkin
John Orr